

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

GARDA CL GREAT LAKES, INC.

and

Case 13-CA-081079

UNITED ARMORED TRANSPORTERS  
OF AMERICA

*Brigid Garrity, Esq.*,  
for the General Counsel.

*Erik Hult, Esq., and*  
*Jeffrey C. Kauffman, Esq.*  
(Littler Mendelson, P.C.)  
Columbus, Ohio, and  
Chicago, Illinois,  
for the Respondent.

*Nicholas C. Kefalos, Esq.*  
(Vernor Moran, LLC)  
Chicago, Illinois,  
for the Charging Party.

DECISION

Statement of the Case

PAUL BOGAS, Administrative Law Judge. This case was tried in Chicago, Illinois, on October 25, 2012. The United Armored Transporters of America (the Union) filed the charge on May 15, 2012, and the Director of Region 13 of the National Labor Relations Board (the Board) issued the complaint on August 8, 2012. The complaint alleges that Garda CL Great Lakes, Inc., (the Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by denying an employee's requests to be represented during a interview that he reasonably believed would result in disciplinary action, and by creating the impression that employees' union or protected concerted activities were under surveillance. The Respondent filed a timely answer in which it denied that it had committed any of the alleged violations.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following findings of fact and conclusions of law.

## Findings of Fact

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## I. Jurisdiction

The Respondent, a corporation, with a place of business in Broadview, Illinois, annually provides security services valued in excess of \$50,000 directly to customers outside the State of Illinois, and purchases and receives at its Broadview, Illinois, facility goods valued in excess of \$50,000 directly from points located outside the State of Illinois. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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## II. Alleged Unfair Labor Practices

The Respondent transports money and other valuables for various clients. It does this using trucks, each of which is staffed by a team of two driver-messengers. The Respondent employs approximately 300 to 320 driver-messengers at its Broadview, Illinois, facility (the facility). Four transport operation supervisors oversee the work of the Broadview driver-messengers. In 2011, the Union engaged in a successful campaign to represent a bargaining unit consisting of the driver-messengers employed at the facility. A representation election was held in October 2011, and on October 25 of that year the Union was certified as the collective bargaining representative of the unit employees.

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## A. Gomez's Union Activity and Baysinger's Knowledge

Gabriel Gomez is a driver-messenger based at the Broadview facility. His supervisor during the relevant time period was Paula Zito-Baysinger, a transport operation supervisor. Both Gomez and Baysinger testified that they had a good working relationship and Gomez stated that he sometimes called Baysinger to seek her advice.

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The evidence shows that Gomez supported the Union and that Baysinger was to some degree aware of that support, but the evidence is inconclusive regarding whether Baysinger was aware of the extent of Gomez's support. Gomez assisted the Union during the organizing campaign by distributing pro-Union fliers and Union authorization cards, talking to employees about the Union, and wearing a pin that carried the slogan "support your local union." According to Gomez, on five or more occasions he was distributing Union materials at the entrance to the facility when Baysinger passed by. Gomez testified that on one such occasion Baysinger made "eye contact" with him. The entrance where Gomez was engaging in this activity was used by all employees and supervisors. Gomez also testified that Baysinger directed him to remove a pro-union pin from his uniform. According to Gomez, during a conversation with Baysinger prior to the Union election, he told Baysinger that the Union was a "good idea." He testified that, on the day before the representation election, Baysinger told him that she knew he was pro-union, that he should "think about" his "vote very carefully," and that she would be "a lot more lenient" if there was a "no" vote regarding representation.

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Baysinger contradicted much of Gomez's testimony about their interactions with respect to the Union. Baysinger acknowledged that she and Gomez and talked about the Union on the day before the representation election, but she specifically denied telling Gomez either that she knew he supported the Union or that she would be more lenient if the employees voted against

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representation. According to Baysinger, while Gomez expressed some support for the Union by stating that he “felt that the Union would be good for the Company,” he also told her that he was still “on the fence” about how he would vote. Baysinger said that in addition to expressing uncertainty, Gomez asked “questions about the vote and stuff and what was going to happen.”

5 Baysinger testified that she saw this as “none of her business” and “was just listening” to Gomez. Baysinger also denied that she had ever seen Gomez distributing union fliers in front of the facility and stated that she had no recollection of his wearing a Union pin or of telling him to remove one.

10 The complaint does not allege violations based on the statements that Baysinger allegedly made during the pre-election conversations with Gomez, or on the testimony that Baysinger directed Gomez to remove a Union pin. Nevertheless, these factual questions arguably have some bearing on resolution of the violations that the complaint does allege. I have carefully reviewed the record evidence relating to these factual questions, and conclude

15 that the evidence does not provide a basis for crediting Gomez over Baysinger with respect to them. Both Gomez and Baysinger testified in a clear and certain manner regarding these matters. No other witness testified in support of Gomez’s testimony that Baysinger actually saw him distributing union fliers. Moreover, given that the front entrance is used by all employees and supervisors, and that the workforce is rather large, it is plausible that Baysinger would not

20 have noticed that Gomez was distributing pro-union materials even if she had entered or exited the facility at a time when Gomez was engaged in that activity. Similarly, no other witness corroborated Gomez’s testimony that Baysinger directed him to remove a pro-union pin or regarding any of the other disputed pre-election statements. Nor was there documentary evidence to support Gomez’s account of these matters. I also note that Baysinger was one of

25 four supervisors with responsibility over the 300 to 320 driver-messengers at the facility, and yet there was no evidence that Baysinger made improper statements regarding union activity to, or in the presence of, any other unit employee. Thus while the General Counsel asserts in its brief that Gomez’s testimony regarding Baysinger’s pre-election statements indicates that Baysinger “had a proclivity for notifying employees that she was aware of their union activities,” Brief of

30 General Counsel at Page 8, what is more telling is that there was no evidence of the supposed “proclivity” other than the testimony of a single employee. Based on my consideration of the demeanor of the witnesses and the record as a whole, I find that there is not a reasonable basis for crediting Gomez over Baysinger regarding the disputed matters discussed above. I do find, however, based on the consistent testimony of both witnesses, that during a conversation in

35 advance of the October 2011 representation election, Gomez told Baysinger that he felt the Union would be “good for the Company.”

#### 40 B. Investigation of Missing Emergency Funds

On December 21, 2011, Gomez and his partner, driver-messenger Adam Hepberg, were at work and in possession of a bag containing emergency cash that they could use with supervisor approval. Gomez suspected that money was missing from the bag based, he

45 testified, on how the bundles of cash were stacked. Gomez and Hepberg reported this to a transport operation supervisor, and turned the cash bag over to the Respondent. The Respondent subsequently examined the bag and concluded that approximately \$10,000 was missing from it.

50 Dan Centracchio, an investigator with the Respondent’s corporate security department, interviewed Gomez on December 28. Centracchio informed Gomez that he was under investigation regarding the missing cash and asked Gomez if he was willing to participate in the

investigation. Gomez agreed to participate "100 percent." Centracchio asked Gomez a number of questions that day, and Gomez answered all of the questions. Gomez did not request Union representation at any point on December 28.

5           Soon after the December 28 meeting, Gomez spoke by phone with Arthur Mangialardi, the Union president. Mangialardi had previously been a driver-messenger with the Respondent and during that time had sometimes been Gomez's partner on routes. Gomez told Mangialardi about the meeting with Centracchio. Mangialardi told Gomez that the next time he "sp[oke] to anybody in management in regards to this matter" he should "ask for a Union rep." Both Gomez  
10 and Mangialardi were aware that, under the Respondent's policy, Gomez would be terminated if the Respondent concluded that he was responsible for the disappearance of the cash.

15           On December 30, Gomez and Hepberg arrived for work at some point between 6:00 and 7:00 am, and Baysinger directed both employees not to begin their route, but rather to wait in the break room. Baysinger took Gomez's weapon and advised him that he would be meeting with Centracchio. Gomez and Hepberg waited for several hours before actually meeting with Centracchio that day. Transcript at Page(s) (Tr.) 142-143. During this waiting period, Gomez came to the supervisor's office intermittently to ask Baysinger what was happening. Aside from  
20 that, Baysinger did not see Gomez and Hepberg while they were waiting, and her interactions with Gomez that day were quite limited, lasting a total of only 2 or 3 minutes. No one told Baysinger what Centracchio was going to interview Gomez about, and she had no role in the interview or investigation. Baysinger was, however, aware that cash had been found missing on Gomez's route and she assumed that was what the interview was about, but she did not discuss the subject with Gomez.

25           Centracchio interviewed Gomez for approximately 10 minutes on December 30.<sup>1</sup> The exact time of the meeting is not clear from the record, although there was credible testimony that it took place several hours after Baysinger informed Gomez about it. It is fair, based on the record, to conclude that the interview began in the morning, no earlier than about 9:00 am and  
30 likely somewhat later than that. The parties stipulate that this interview was investigatory in nature and that, at the time of the interview, the Respondent had not decided what disciplinary action, if any, it would take against Gomez. During the interview, Gomez denied any knowledge of what had happened to the missing cash. Centracchio asked Gomez if he would consent to polygraph testing and told him that "if you don't take it, then you're going to lose your job."  
35 Gomez said he would take the test and signed a form consenting to do so. The test was not given that day, but was scheduled for January 3, 2012. Later that day, Gomez was suspended, with pay, until the scheduled polygraph testing. In approximately the last week of February 2012, Gomez was suspended pending further investigation of the missing money, and that suspension was continuing at the time of trial. The complaint does not include an allegation that  
40 Gomez's suspension was unlawful and I do not make any finding regarding whether the suspension was proper or whether Gomez was in any way responsible for the cash shortage.

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<sup>1</sup> Centracchio also interviewed Hepberg that day for approximately 5 to 10 minutes.

C. Factual Dispute Regarding Requests for  
Union Representation at December 30 Interview

One of the central factual questions in this case is whether, on December 30, the Respondent denied requests by Gomez to have a union representative present when he met with Centracchio. Gomez testified that he made such requests to Baysinger and Centracchio and that both refused his requests. Baysinger and Centracchio denied that Gomez requested the presence of a union representative.

Gomez's testimony regarding the request for a union representative was as follows. When Baysinger told Gomez that Centracchio wanted to speak with him, Gomez told Baysinger that he wanted a union representative. Baysinger responded that no one was present from the Union and that the meeting with Centracchio "was going to take place with or without Union representation." Gomez immediately called Mangialardi, who told him that Gomez should "sit tight" and someone would be sent over to represent him. Gomez and Mangialardi "text[ed] back-and-forth" and, within a few minutes, Gomez received a text message from Mangialardi stating that Mary Rangel, a Union steward, was on her way to represent him. Gomez informed Baysinger that Rangel was coming, but Baysinger said "the meeting between you and corporate is going to take place whether she's here or not." Later that morning, Centracchio came to the break room to escort Gomez to an office for the meeting. Gomez told Centracchio that the Union steward had not arrived yet and Centracchio said: "I don't give a fuck whether she's here or not. The meeting's going to take place. It's going to happen." Gomez submitted to the interview even though no union representative had arrived. After the interview concluded, Centracchio told Gomez to wait in the break room until they received further instructions from the branch manager. When Gomez got to the break room, he met with Rangel. Rangel interviewed Gomez and Hepberg for approximately 90 minutes about what had happened that day, and took notes regarding their accounts.

Contrary to Gomez's testimony, Baysinger testified that on December 30, Gomez never made a request to her for Union representation. Tr. 128. In addition, Baysinger stated that either during the Union campaign or after the Union was certified, the Respondent had trained her regarding the right of bargaining unit employees, under *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975), to have a union representative present during an investigatory interview. Baysinger stated that the Respondent instructed her that, if an employee requested a union representative, she must "stop all proceedings and allow the [requesting employee] to obtain a union representative." If a union representative was not available, Baysinger said, she was to wait for one. Baysinger testified that her understanding was that the Respondent could discipline her if she failed to follow these instructions regarding employees' rights.

Similarly, Centracchio denied that Gomez requested union representation or otherwise invoked his *Weingarten* rights on December 30. Centracchio also denied that he ever told Gomez "I don't give a fuck" and stated, more generally, that he does not "speak that way." Centracchio's memory was faulty regarding the time that the interview took place – remembering that it occurred at about 5:30 or 6:00 pm, whereas, in fact, it took place in the morning somewhere between about 9:00 and 11:00. Centracchio testified that the Respondent's corporate security department had previously provided him with a pamphlet concerning employees' rights under the *Weingarten* decision, and that he had studied the pamphlet. He does not remember if the pamphlet provided direction on how to proceed in the event that an employee requested representation and no union representative was available. According to Centracchio, employees had invoked the right to have a union representative during past investigations and his response had been to allow the union representative to be

present. Like Baysinger, Centracchio stated that he could be disciplined for violating the Respondent's instruction to honor employees' *Weingarten* rights.

Based on my observation of the demeanor of the witnesses and after considering the record as a whole, I conclude that the testimony of Baysinger and Centracchio was at least as credible as that of Gomez on the question of whether Gomez requested a union representative on December 30. Therefore, I find that the General Counsel has failed to establish that Gomez made such a request, or that the Respondent denied it. To begin with, I note that in his pre-trial affidavits to the Board, Gomez never asserted that he asked Centracchio for union representation, that Centracchio denied such a request, or that Centracchio said he did not "give a fuck" if Gomez's union representative had arrived or not. Gomez's failure to include this is telling since the relevant charge alleged only two violations and one of them was that the Respondent "questioned Gabriel Gomez without a union representative present after he requested union representation." It is implausible that Gomez, in his statements to the Board, would have failed to mention that Centracchio denied his request for a union representative, and did so in such harsh terms, if Centracchio had engaged in that conduct. Moreover, Gomez did not provide a plausible explanation for the omission. It appears that even the General Counsel was surprised by Gomez's claim at trial that Centracchio denied a request for union representation since the complaint only identified Baysinger as having done so. It was not until after Gomez volunteered on direct examination that Centracchio had denied a request for union representation that the General Counsel amended the complaint to add mention of such misconduct by Centracchio. The fact that Gomez's pre-trial affidavits contain no mention of Centracchio's purported misconduct suggests that Gomez's testimony on that point was fabricated and significantly undermines Gomez's credibility.

In addition, Mangialardi's testimony undercuts Gomez's in some respects. For example, Mangialardi stated that Gomez did not call him until about 10:00 am, which is inconsistent with Gomez's claim that as soon as he found out he would be meeting with Centracchio and that a representative was not present at the facility (which occurred between about 6:00 am and 7:00 am) he called Mangialardi to ask that a representative be provided. Moreover, Mangialardi did not recall Gomez stating that he had asked the Respondent for a union representative. Tr. 78-79. In fact, in Mangialardi's most detailed testimony regarding his December 30 phone conversation with Gomez, Mangialardi did not state that Gomez ever asked him to supply a union representative. Id. To the contrary, Mangialardi testified that *he told Gomez*, "You need a rep. . . . I'll find you one," not that Gomez had requested the representation. Similarly, Gomez's testimony that he had back-and-forth text messages with Mangialardi about union representation is contrary to Mangialardi's testimony, which indicated that Mangialardi sent a single text message to Gomez stating that Rangel was on her way and that Gomez did not respond to, or acknowledge receipt of, that message.

I also consider it telling that Rangel's contemporaneous notes of what Gomez and Hepberg reported to her on December 30 make no mention of Gomez requesting, or being denied, Union representation. Rangel interviewed Gomez and Hepberg for approximately 90 minutes about the events of that day, and did so immediately after those events had taken place. When asked whether she wrote down what Gomez and Hepberg said, Rangel testified: "About everything, yes. As much as I could get, yes." If, in fact, Gomez had repeatedly been denied union representation, once in the colorful language Gomez now claims Centracchio used, I would expect Gomez to mention that during the meeting with Rangel. That meeting lasted 90 minutes – far longer than Gomez's combined conversations that day with Baysinger and Centracchio. Similarly, I would expect that Rangel would view such statements as worth recording in her notes since she says she included "about everything" and because Rangel herself was the union representative to whom Gomez had purportedly been denied access.

Moreover, at one point in her testimony, Rangel conceded that she could not remember Gomez stating that he had asked Baysinger for a union representative. Tr. 100-101

5 The fact that Gomez submitted to the interview even though a union representative had not yet arrived casts further doubt on Gomez's claim that he requested a representative. Gomez did not explain why he did not insist on waiting for Rangel other than to say "I felt like I had no choice." He did not claim that either Baysinger or Centracchio threatened that he would be disciplined if he refused to proceed until Rangel arrived. Indeed Mangialardi himself appeared mystified as to why Gomez submitted to the interview without Rangel, testifying:  
10 "[Gomez] says, 'they asked me to talk.' He went and talked. I don't know why."

15 In their briefs, the General Counsel and the Respondent both argue that the witnesses for the other side had reason to testify untruthfully. The Respondent's arguments in this regard were more persuasive than those of the General Counsel. As the Respondent notes, at the time of trial Gomez was still on indefinite suspension. This would provide some cause for animosity not only towards the Respondent, but, more specifically, towards both Baysinger (his direct supervisor), and Centracchio (the official who investigated him). In addition, Gomez knew that Mangialardi, the Union president, had told him not to talk about the missing money again without a union representative present and had gone to some lengths on December 30 to make  
20 such representation available. Under such circumstances, Gomez could reasonably have been concerned that by stating that he had not invoked his right to union representation he would bring himself into disfavor with the Union president.

25 On the other hand, the General Counsel argues that Baysinger and Centracchio both had a motive to lie because they believed the Respondent could discipline them for failing to comply with the employee's request, pursuant to *Weingarten*, for a union representative. However, the General Counsel does not suggest any motivation that would explain why Baysinger or Centracchio would deny Gomez his rights under *Weingarten* in the first place if, as the General Counsel notes, they believed the Respondent might discipline them for such  
30 misconduct. Neither Baysinger nor Centracchio were shown to have any personal stake in the results of the investigation. Baysinger in particular would have no obvious motive to treat Gomez unlawfully since both she and Gomez testified that their working relationship was good. Centracchio had never met Gomez before being called in to investigate the disappearance of cash from the emergency bag, and no reason is apparent that would lead Centracchio to risk discipline by denying Gomez his *Weingarten* rights. Based on the above, I find that the record  
35 does not show that Gomez, more likely than not, made a request for Union representation to either Baysinger or Centracchio, or that the Respondent denied such a request.

#### 40 D. Baysinger's Alleged Statement to Gomez Regarding Board Investigation

45 In approximately July 2011, the Respondent terminated two unit employees – Dwayne Henderson and Wiley Spencer. Gomez, at the request of Mangialardi, gave a statement to the Board the following September regarding the terminations. Neither Mangialardi nor Gomez told Baysinger, or any other company official, about Gomez's participation in the Board investigation.

50 The record shows that Baysinger was one of the individuals who supervised Henderson and Spencer. She was not, however, involved in the circumstances that led to their terminations and did not recommend or participate in the decision to take those actions. In February 2012, the Union and the Respondent reached a settlement that provided reinstatement and full back pay for Henderson and Spencer. Mangialardi notified the unit members, including Gomez, of this outcome by text message. A branch manager directed Baysinger to put Henderson and Spencer back on the work schedule, and Baysinger did so.

They returned to work in late February. The branch manager did not tell Baysinger why the employees were being reinstated.

5 There is a factual dispute regarding whether, shortly after Henderson and Spencer returned to work, Baysinger made statements to Gomez in which she claimed to know that he had participated in the Board proceeding that led to the reinstatement. Gomez testified that the day after Henderson and Spencer returned to work he had a conversation with Baysinger about their reinstatement. According to Gomez, "Ms. Baysinger . . . told me that she knew that I had given a statement to help out both gentlemen." Gomez testified that he asked how she knew, 10 and Baysinger responded "not to worry" that she "had her sources." Baysinger, on the other hand, testified that she never told Gomez she knew he was involved in the Board's activities regarding Henderson and Spencer or any Board investigation. She also denied that she knew, or had been told, about Gomez's participation in the Board investigation. According to Baysinger when Henderson and Spencer were reinstated she was as "surprised as everyone 15 else" and "had no idea" of anything going on regarding their cases.

After carefully reviewing the record and considering the demeanor of the witnesses, I do not find a basis for crediting Gomez over Baysinger regarding the factual dispute discussed immediately above. Gomez's account was not shown to contain significant inconsistencies, but 20 at the same time it was lacking in the sort of details that would enhance its credibility. Gomez did not explain how he came to be in Baysinger's office, state how long the meeting lasted, or recall the date of the meeting. In Gomez's telling, the conversation consisted entirely of Baysinger saying she knew he was involved in the investigation, Gomez asking how she knew this, and Baysinger replying that he should not worry because she had sources. It seems 25 unlikely that such a statement would be the first thing out of Baysinger's mouth during a meeting – without any greetings, preliminary discussion, or conversation regarding other matters. I note also, that no other witnesses testified that Gomez told them about Baysinger's alleged statement, and no contemporaneous documentation of the alleged meeting was presented. Based on my review of the record as a whole, I believe one would have to strain to identify a 30 plausible motive that would lead Baysinger to raise Gomez's participation in the Henderson/Spencer investigation. The Respondent had already agreed to provide significant relief in an effort to put the controversy behind it and Baysinger's alleged comment could only set that effort back. Moreover, Baysinger was not shown to have any personal stake in the terminations, and Baysinger and Gomez had a good working relationship prior to Gomez's 35 suspension. Baysinger's denial that she had made the statements was confident and unequivocal. In addition, I think, for the reasons discussed above, that Gomez's testimony that Centracchio denied his request for union representation was false. Gomez's willingness to give the testimony regarding Centracchio casts some doubt over his accounts regarding other disputed matters. Based on the demeanor of the witnesses, my consideration of the record as a 40 whole, and the specific reasons discussed above, I find that the evidence fails to show that Baysinger more likely than not told Gomez that she knew he helped in the Board investigation regarding Henderson and Spencer and/or that she had "sources" for such information.



### Complaint Allegations

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act on December 30, 2011, when Baysinger and Centracchio denied Gomez's requests to have a Union representative present during an interview that Gomez reasonably believed would result in disciplinary action against him, and in February 2012 when Baysinger created the impression of surveillance by telling employees that she was aware of their cooperation in a Board investigation.

### III. Analysis and Discussion

#### *Weingarten* Allegation

In *NLRB v. J. Weingarten, Inc.*, supra, the U.S. Supreme Court affirmed the Board's rule that an employer violates Section 8(a)(1) of the Act by denying a bargaining unit employee's request to have a union representative present during an investigatory meeting that the employee reasonably believes might lead to discipline. To establish the violation the General Counsel must show, inter alia, that the employee made such a request. *Praxair Distribution, Inc.*, 358 NLRB No. 7, slip op. at 1 n.2 (2012); *New Jersey Bell Telephone Co.*, 300 NLRB 42, 48 (1990), enfd. 936 F.2d 144 (3d Cir. 1991); *Montgomery Ward & Co.*, 273 NLRB 1226, 1227 (1984), enfd. 785 F.2d 316 (9<sup>th</sup> Cir. 1986) (Table); *Seattle-First National Bank*, 268 NLRB 1479, 1480 (1984). The General Counsel alleges that, on December 30, 2011, Gomez made requests for union representation to both Baysinger and Centracchio, but they denied his requests and required him to proceed with an investigatory meeting without a union representative. As discussed above, I find that the record does not show that Gomez made a request for union representation to either Baysinger or Centracchio. Therefore, the General Counsel has failed to establish a violation.

The allegation that the Respondent violated Section 8(a)(1) on December 30, 2010, by denying Gomez's requests for union representation during an investigatory interview should be dismissed.

#### Impression of Surveillance

An employer creates the impression of surveillance in violation of Section 8(a)(1) when, under all the relevant circumstances, reasonable employees would assume from the employer's statement or conduct that their union or other protected activities have been placed under surveillance. *Metro One Loss Prevention Services Group*, 356 NLRB No. 20, slip op. at 14 (2010); *Fred'k Wallace & Son*, 331 NLRB 914 (2000), quoting *Flexsteel Industries*, 311 NLRB 257 (1993). The General Counsel alleges that, in February 2012, after Henderson and Spencer were reinstated pursuant to a settlement, Baysinger told Gomez that she knew he had "given a statement to help out [Henderson and Spencer]," and that she had "sources" for such information. As discussed above, I find that the evidence fails to establish that Baysinger made these statements and the General Counsel does not identify other statements by the Respondent that establish this violation.<sup>2</sup>

<sup>2</sup> In its brief, the General Counsel also discusses Gomez's testimony that, prior to the October 2011 representation election, Baysinger told him that she knew about his union activities. The General Counsel does not allege a violation based on that supposed statement, but rather argues that it lends credibility to Gomez's testimony regarding alleged statements by

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The allegation that, in about February 2012, the Respondent violated Section 8(a)(1) by creating the impression that employees' union and/or protected concerted activities were under surveillance should be dismissed.

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### Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

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2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has not been shown to have committed the violations of Section 8(a)(1) alleged in the complaint.

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On these findings of fact and conclusions of law and on the entire record, I issue the following recommended order.<sup>3</sup>

### Order

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The complaint is dismissed.

Dated, Washington, D.C. January 29, 2013.

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PAUL BOGAS  
Administrative Law Judge

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Baysinger in February 2012. For the reasons discussed above, I find that the record does not establish that Baysinger made the pre-election statement alluded to by the General Counsel.

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<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.